



1600 Liberty Building, 424 Main Street, Buffalo, New York 14202
P 716.854.3400 • www.RuppPfalzgraf.com

CHAD A. DAVENPORT
Davenport@RuppPfalzgraf.com

February 10, 2023

VIA CM/ECF

Hon. H. Kenneth Schroeder Jr.
United States Magistrate Judge
United States District Court
Western District of New York
2 Niagara Square
Buffalo, New York 14202

Dear Judge Schroeder:

Re: McNeil v. City of Buffalo, et al.
Case No.: 1:20-CV-00998-LJV-HKS
Our File No.: 5324.27481

Plaintiff filed his complaint in the above action on July 31, 2020, and the defendants, including the City of Buffalo, Byron Lockwood, John Davidson, Patrick Garry, Anthony Burvid, Jenny Velez, Anthony McHugh, Patrick Boice, and Matthew Vaughn (collectively referred to as the “City Defendants”), answered the complaint on September 23, 2020. (*See* Dkt. 7). That same day, former counsel for the City Defendants filed a motion for judgment on the pleadings seeking dismissal of some, but not all, of the complaint’s claims. (Dkt. 8). Specifically, the City Defendants state in their motion that they are seeking partial dismissal of the complaint on the following grounds:

The Defendants respectfully move this Court on the grounds that (1) all claims against the City and Lockwood must be dismissed with prejudice because Plaintiff has failed to state a cause of action; (2) Plaintiff’s vague and conclusory conspiracy allegations do not state a cause of action; (3) there is no viable false arrest/imprisonment claim under the Fourteenth Amendment; (4) all official capacity claims are subject to dismissal as duplicative against the City; and (5) punitive damages may not be awarded against a municipality.

(*See* Dkt. 8-2, at p. 2). Plaintiff opposed the City Defendants’ motion, which was fully briefed on November 12, 2021

In other words, even if the Court were to grant the City Defendants’ motion in its entirety, Mr. McNeil still would be able to pursue claims against defendants Davidson, Garry,

RUPP PFALZGRAF LLC

February 10, 2023

Page 2

Burvid, Velez, McHugh, Boice, and Vaughn in their individual capacity, including his claims of false arrest, false imprisonment, and malicious prosecution against these defendants under the Fourth Amendment. Mr. McNeil also would be able to pursue his claim for punitive damages against these defendants.

For this reason, Plaintiff respectfully requests an opportunity to pursue discovery on those portions of the case that will remain unaffected by the City Defendants' motion. Granting this relief will allow the parties to move the case closer to being trial ready so that there is no further delay in this matter. We are available at the Court's convenience for a conference to discuss entry of a case management order to allow discovery on the unaffected portions of the case.

Thank you for your consideration of this request.

Respectfully submitted,

s/Chad A. Davenport

Chad A. Davenport

cc: David M. Lee, Esq. (VIA CM/ECF)
R. Anthony Rupp III, Esq. (VIA CM/ECF)